

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
RUTHWERTHEIM' SMITH)

Appearances:

For Appellant: Edgar R. Morris
Certified Public Accountant

For Respondent: Wilbur F. Lavelle
Associate Tax Counsel

OPINION

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Ruth Wertheim Smith against a proposed assessment of additional personal income tax in the amount of \$1,311.82 for the year 1956.

The issue presented in this appeal is whether respondent properly assessed interest on appellant's 1956. tax liability,

On her federal and state returns for 1956, appellant claimed a net fire loss deduction in the amount of \$23,028. The Internal Revenue Service disallowed the entire loss.

Based upon the action of the Internal Revenue Service, respondent Franchise Tax Board issued a notice of proposed assessment on June 27, 1961, similarly disallowing the deduction claimed. On August 25, 1961, appellant's representative filed a protest, alleging that the Internal Revenue Service contemplated allowing a part of the deduction; but that appellant was in Europe and the settlement was not

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-yet final. The representative said that upon her return appellant would report "any change in her tax return, recompute her tax liability, and pay any deficiency."

During the next two years, respondent wrote to appellant's representative eight times regarding the proposed settlement. The fifth letter led to the only reply, which indicated that the matter was not settled. In the absence of any response to further inquiries, appellant's protest was denied on June 21, 1963. Respondent issued a notice of action affirming tax in the amount of \$1,311.82, plus interest of \$486.69, computed from the due date of the 1956 return to the then current date.

On July 20, 1963, appellant filed this appeal, attaching a copy of an offer to the Internal Revenue Service, which stated that, subject to acceptance by the Commissioner of Internal Revenue, \$7,971.62 was deductible as a fire loss for 1956. This document was signed by appellant and was dated September 8, 1961,

On November 8, 1963, after requesting and receiving notice from appellant that the Commissioner of Internal Revenue had accepted the offer, respondent sent to appellant's representative a proposed stipulation to adjust the state tax accordingly, with interest, and to dismiss this appeal.

In a reply brief in this appeal, dated December 28, 1964, appellant's representative stated that appellant was very ill and did not recall receiving the proposed stipulation. Thereafter, on January 8, 1965, respondent sent a copy of the proposed stipulation to appellant's representative, requesting its execution and return together with payment of the tax plus interest to the date of payment. The stipulation was not returned nor was payment made,

"Appellant and respondent have agreed that the amount of the fire loss deductible for 1956 is \$7,971.62. It is argued by appellant, however, that interest to the current date is not due since as early as August 25, 1961, when she filed her original protest, she provided all the information necessary to reach a settlement. Appellant contends the delay has been the fault of, respondent.

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A review of all the events leading to the present stage of this matter does not indicate that the delay in payment was respondent's fault. It appears to have been understood at all times that determination of the state tax liability was to be deferred pending the outcome of the federal dispute. Appellant's protest of August 25, 1961, far from calling for immediate action, suggested deferral. Thereafter, appellant was remiss in failing to keep respondent informed of progress in the federal matter. Appellant, moreover, could have paid the tax at any time to stop the running of interest, without jeopardizing her right to a refund.

In any event, there is no escape from the clear and mandatory provisions of the law. Section 18688 of the Revenue and Taxation Code provides that "Interest upon the amount assessed as a deficiency shall be assessed, collected and paid in the same manner as the tax at the rate of 6 percent per year from the date prescribed for the payment of the tax until the date the tax is paid."

O R D E R - '

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Ruth Wertheim Smith against a proposed assessment of additional

personal income tax in the amount of \$1,311.82 for the year 1956 be modified by allowing a casualty loss deduction in the amount of \$7,971.62 and recomputing the tax accordingly. In all other respects, the action of the Franchise Tax Board is sustained.

John W. Lynch, Chairman
Daniel R. Leake, Member
Paul H. Ward, Member
Robert A. Gentry, Member
_____, Member

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